

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BRIAN FOX,)	
Plaintiff,)	Case No.
)	
v.)	Judge
)	
MANHATTAN MECHANICAL)	Magistrate Judge
SERVICES, LLC,)	
Defendant.)	Jury Trial Demanded

PLAINTIFF'S COMPLAINT

Statement of Facts

1. Plaintiff, Brian Fox, ("Fox") was employed at Manhattan Mechanical Services, LLC ("MMS") as a pipefitter/step-up foreman. He was never disciplined or reprimanded for any matters prior to his discharge.

2. During his employment, he completed and passed National Center for Continuing Education and Research tests.

3. His hourly wage rate was \$42.90 and he regularly worked overtime hours.

4. In 2013 Fox underwent a vasectomy and experienced complications. He was required to undergo additional surgery and take prescription pain medicine.

5. As a result, he was treated by a physician who monitored his use of pain medication, and he returned to work where he disclosed his medication and was allowed to work while taking the medication.

6. On July 31, 2017, he was called by a supervisor who told him not to report for work that evening and to go to the company's doctor for an examination. His manager told him that someone had made a signed complaint that he was drinking five to six Monster Energy drinks a night and was seen taking medication at work. Fox was not shown the complaint.

7. The Safety Department scheduled an appointment for him on August 1, 2017 at 1 Source Occupation Health Solutions.

8. Fox attended the medical appointment as scheduled. He was told that his blood pressure and heart rate were slightly elevated. He provided specimens for testing.

9. As he was leaving the appointment, he encountered his supervisor, Bob Barsky, who advised that he was waiting for the test results.

10. Within forty-five minutes Barsky called Fox and told him that he was “a danger to himself and others.”

11. On August 2, 2017, Fox was called by Melynie Wagner from MMS Human Resources who told him to have his doctor complete short term disability certification for benefits and to come in for a meeting about steps to return him to work.

12. As neither Fox’s physician nor the company’s physician would sign a form certifying that he was eligible for short term disability benefits, he was told to obtain a third opinion.

13. Fox met with Dr. Keyur Chauhan on August 24, 2017, the first available appointment. He underwent testing and set a follow-up appointment.

14. On August 26, 2017, Dr. Gawtham Gutta, Fox’s pain management doctor, issued a letter stating that Fox had been compliant with his pain management treatment and had not exhibited any negative symptoms that would impair his ability to perform his job and was fit for duty.

15. On August 31, 2017, Fox met with Dr. Chauhan, who told him that he was fit for duty and that there was no indication from the testing or examination that he could not perform his job. He was given a letter with that information which he provided to MMS.

16. On September 6, 2017, MMS sent Fox a letter stating that he was terminated “without cause” due to reduction in the work force.

17. The letter was false and a pretext for discrimination as MMS did not reduce the work force in September of 2017, and in fact, began to increase the work force.

18. As a result of the loss of his employment, Fox suffered loss of income and benefits, as well as emotional distress.

19. Fox filed a charge of discrimination number 440-2018-02812 with the U.S. Equal Employment Opportunity Commission (“US EEOC”) alleging discrimination on the basis of disability, as well as a perceived handicap by Manhattan Mechanical Services, LLC.

20. On November 6, 2018, the US EEOC issued a Notice of Right to Sue to Fox. (copy attached) for EEOC charge 440-2018-02812.

Venue

21. Venue is appropriate in this court as both Plaintiff and Defendant reside in the Northern District of Illinois.

Claim for Violation of the Americans with Disabilities Act 42 USCA § 12112

22. Fox suffered from a disability as he had significant pain resulting from his post-surgical infection which continued to occur in 2017.

23. His disability limited a major life activity, his work, unless he took medication to control pain.

24. Fox had advised MMS of this disability and his need for medication prior to August of 2017. MMS had accommodated his need for pain medication and tested and monitored him for its affect. He cooperated in that process at all times.

25. By allowing Fox to work while taking medication from 2013 – 2017, MMS accommodated Fox's disability.

26. In August of 2017 when MMS determined that Fox could not work while taking pain medication, MMS withdrew and denied the accommodation.

27. The actions by MMS were based on a belief, contrary to medical opinions, that Fox was unable to perform his job while taking medication.

28. The termination of Fox's employment constituted a violation of the Americans with Disabilities Act, 42 USCA § 12112(a)(1)(3)(5).

29. As a result of the violation of the Act by MMS, Fox suffered lost wages and benefits as well as emotional distress.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against the Defendant on each claim for relief, and for the following relief:

- A. Declare that the Defendant breached its legal responsibilities and/or duties by violating the law.
- B. Award any appropriate injustice relief.
- C. Award all available legal and equitable relief to make Plaintiff whole for his financial losses as well as emotional injury.
- D. Order Plaintiff's reinstatement in employment.
- E. Award Plaintiff reasonable fees and costs incurred in this action.
- F. Award such other amounts and further relief as the Court deems proper, equitable and just based on the matters at trial.

PLAINTIFF DEMANDS TRIAL BY JURY

Respectfully submitted,

s/Anthony Pinelli

Anthony Pinelli

One of Plaintiff's Attorneys

Dated: January 11, 2019

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